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International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Sixty-fifth year

Identical letters dated 13 October 2010 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to transmit to you the attached letters dated 20 and 23 September 2010 that I have received from Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda (see annexes I and II).

In his letter of 20 September 2010, President Byron requests that Judge Joseph Asoka de Silva and Judge Taghrid Hikmet be authorized to complete the *Ndindiliyimana et al.* case notwithstanding that their term of office will expire on 31 December 2010. The case was expected to finish by December 2010; however, owing to staffing problems, it is now projected that the judgement will be delivered in early 2011.

The letter dated 23 September 2010 contains two requests. First, President Byron requests that the Tribunal be allowed to exceed temporarily the maximum number of nine ad litem judges allowed by article 11, paragraph 1, of the statute of the Tribunal. By Security Council resolution 1901 (2009) and General Assembly decision 64/415, the Tribunal was authorized to have up to a maximum of 12 ad litem judges at any one time, returning to a maximum of 9 by 31 December 2010. The Tribunal currently has 12 ad litem judges, and the cases in which they are involved will not be completed by the end of 2010. An extension of the authorization granted in resolution 1901 (2009) and decision 64/415 is therefore necessary.

Second, President Byron requests that either (a) at least three ad litem judges be converted to permanent judges, or (b) the statute be amended to permit ad litem judges to have the same powers as permanent judges, including taking part in

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elections of and being elected as President and Presiding Judge. The Tribunal will be left with one permanent judge in the Trial Chambers after the redeployment of four permanent judges to the Appeals Chamber in 2011. The Tribunal will therefore not have enough judges to fill the positions of President and Presiding Judge since, according to the statute, ad litem judges are not eligible for election to these positions. The purpose of the proposal of President Byron is to enable the Tribunal to fill these essential positions without having to appoint new permanent judges. President Byron states that option (a) above would have minor financial implications and that option (b) would not have any financial implications. This request was first submitted to the Security Council and the General Assembly on 2 June 2010 (see A/64/814-S/2010/289), but was not addressed.

It falls to the General Assembly and the Security Council to consider and decide on these requests. Accordingly, I would be grateful if you would bring the letters from President Byron to the attention of the members of the General Assembly and the members of the Security Council.

(*Signed*) **BAN** Ki-moon

Annex I

Letter dated 20 September 2010 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

I am writing to you concerning the need for an exceptional authorization by the Security Council to allow permanent Judge Joseph Asoka de Silva and ad litem Judge Taghrid Hikmet to complete their last assignment after the end of their terms of office.

This request is linked to a delay in the judgement delivery in the multi-accused *Ndindiliyimana et al.* trial to which both judges are assigned. I informed the Security Council already during my address in June 2010 that this case was facing particular staffing difficulties with the departure in June 2010 of the Judgement Coordinator, who could not be replaced until today. Four other members of the judgement drafting team also left during the past year. The judgement was expected to be delivered in December 2010; however, the lack of sufficient drafting support and the loss of institutional memory has led to a delay of some months. The judgement delivery is now expected no later than March 2011.

Judge de Silva, a permanent judge who is working part-time with the authorization of the Security Council, is not assigned to any other case and wishes to complete his work at the Tribunal. Ad litem Judge Hikmet is assigned also to the *Hategekimana* and *Kanyarukiga* trials, but in both cases judgements will be delivered in the course of 2010. Therefore, the extension of the terms of office of both judges beyond 31 December 2010 were not requested in the context of Security Council resolution 1932 (2010).

For the reasons set out above, I ask the Security Council that Judge de Silva, on a part-time basis, and Judge Hikmet, notwithstanding the expiry of their term of office of 31 December 2010, be authorized to finish the *Ndindiliyimana et al.* case, which they have begun before the expiry of their term of office. Similar situations have been addressed by the Security Council in resolutions 1241 (1999), 1482 (2003) and, most recently, 1901 (2009).

I would be grateful if you could bring this matter to the attention of the Security Council.

(*Signed*) Dennis **Byron**
President

Annex II

Letter dated 23 September 2010 from the President of the International Criminal Tribunal for Rwanda addressed to the Secretary-General

This letter supplements my request sent on 20 September 2010 concerning an authorization for Judges de Silva and Hikmet to complete their current assignments beyond the expiry date of their terms of office on 31 December 2010.

With this letter, I wish to draw your attention to two additional requests. For our purposes, it would be sufficient if all three requests were dealt with in one Security Council resolution.

The first additional request is related to my request mentioned above. Recently, Judge Fremr joined the Tribunal to serve again as an ad litem judge on the *Nizeyimana* trial. If Judges de Silva and Hikmet are authorized to work until completion of the *Ndindiliyimana et al.* case, in which judgement delivery is now expected in March 2011, the total number of ad litem judges serving at the Tribunal until the *Ndindiliyimana et al.* judgement delivery would be 12. After this judgement, under the current projections, the number would go down to 10.

Therefore, I request that the Security Council extend further the current exemption from article 11, paragraph 1, of the statute of the Tribunal, as granted until 31 December 2010 in resolution 1901 (2009), concerning the maximum permissible number of ad litem judges serving at the Tribunal.

Concerning the second additional request, I would like to refer to my letter of 25 May 2010. In that letter, I submitted several requests concerning the judges of the Tribunal, which have been addressed in their majority in resolution 1932 (2010). One of these requests has not yet been considered by the Security Council, however, and I would like to draw your attention once more to this issue, which is of major importance to ensuring that the Tribunal will be able to function in 2011. While I will point out the essential elements of my request, I would ask you to refer also to my previous letter for more details.

My second and final term as President, as well as Judge Khan's second term as Vice-President, will expire by the end of May 2011.

We will soon need to start preparations to ensure that these two positions, as well as the positions of Presiding Judges of Trial Chamber II and III, can be filled with resident judges after the end of the current presidency and vice-presidency and after the redeployment of Judge Sekule, the Presiding Judge of Trial Chamber II, and Vice-President Khan, the Presiding Judge of Trial Chamber III, to the Appeals Chamber. We will not be in a position to do so, however, without some action being taken from the responsible United Nations organs.

Articles 13 (2) and (7) of the statute provide that the President and the Presiding Judges are members of a Trial Chamber. According to article 12 quater (2) (a), ad litem judges are not eligible as President or Presiding Judge of a Trial Chamber. It is the practice of the Tribunal to apply the same requirement to the Vice-President.

As I pointed out in my earlier letter, currently only five resident permanent judges serve at the Tribunal, four of whom will be redeployed to the Appeals Chamber: Judge Byron (the President of the Tribunal), Judge Khan (Vice-President and Presiding Judge of Trial Chamber III), Judge Sekule (Presiding Judge of Trial Chamber II) and Judge Ramaroson. The redeployment of four judges will leave only one permanent judge (Judge Tuzmukhamedov) at the Trial Chambers in Arusha. That judge joined the Tribunal only recently, in September 2009.

Therefore, I proposed in my previous letter two cost-effective possibilities as to how to address our need to fill the key functions of the Tribunal without adding new judges. Both options involve relying on the currently serving ad litem judges, who have the necessary experience and institutional memory to perform the functions efficiently.

The first possibility would be the conversion of at least three ad litem judges to permanent judges. As I pointed out in my letter, five of the nine resident ad litem judges whose terms of office have been extended beyond 31 December 2010 do not have the same nationality as any current permanent judge of the Tribunal or any judge of the International Tribunal for the Former Yugoslavia who is or will be serving at the Appeals Chamber (see article 12 bis (1) (b) of the statute). Judge Fremr (the Czech Republic) who recently was reappointed as an ad litem judge also fulfils the requirements. The proposed conversion would require that the Security Council authorize the Secretary-General to appoint, pursuant to article 12 bis (2) of the statute, the three judges in lieu of the three permanent judges who have left the International Criminal Tribunal for Rwanda, notwithstanding that the terms of the three permanent judges have expired.

A second option to address the lack of sufficient permanent judges would be to amend the Tribunal statute and to enable ad litem judges to fill the key functions of the Tribunal. This would require an amendment of the statute of the Tribunal by deleting article 12 quater (2) and amending article 13 so that ad litem judges would have the same powers as permanent judges, including eligibility as President, Presiding Judge of a Trial Chamber and, consequently, as Vice-President.

Both options would have no or only minor financial implications. In the first option, ad litem judges converted to permanent judges would only become entitled to education grants and education grant travel for their eligible children. The judges would not be entitled to pension rights, unless their term as permanent judges was extended beyond three years, which is unlikely under the time frame of the current completion strategy. In the second option, there would be no financial implications at all.

As we are approaching 2011 and need to make preparations to ensure the functioning of the Tribunal throughout the next year, I would be grateful if you could bring both my additional requests to the attention of the Security Council and the General Assembly for appropriate action.

(*Signed*) Dennis **Byron**
President